

<p>1 Dawley 101</p> <p>2 changes with regard to the Logan account 3 alone?</p> <p>4 MR. TRAUB: Objection to the 5 form.</p> <p>6 Q Only \$370.00.00 of which had to do 7 with appreciation or depreciation.</p> <p>8 On the basis of what was Marks, 9 Paneth & Shron making those other journal 10 entry adjustments?</p> <p>11 MR. KELLY: Objection.</p> <p>12 MR. TRAUB: Objection to the 13 form.</p> <p>14 Improper use. They weren't 15 journal entries. Even your 16 accountant told you earlier.</p> <p>17 MR. HAYWOOD: Now, you're 18 testifying.</p> <p>19 You object to the form and 20 your reason for it.</p> <p>21 MR. KELLY: I join in that 22 objection.</p> <p>23 Q There were adjustments being 24 suggested by Marks, Paneth & Shron, right?</p> <p>25 A Yes.</p> <p>LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 103</p> <p>2 cash to accrual.</p> <p>3 Q You're saying all of those, if 4 there are sixty-one, their adjustments are the 5 result of the change from cash to accrual and 6 no one of them is just a blanket change in 7 figures in number?</p> <p>8 A I don't remember. I didn't memorize them all, but 10 there may have been a reclassification from 11 like an expense account to a capital account, 12 so that you would depreciate it rather than 13 expense it during the current year. I think 14 that has transpired.</p> <p>15 Q Now, getting back to this request.</p> <p>16 A Yes.</p> <p>17 Q You say these were not questions 18 that Dalton could answer. With regard to those that they are 20 concerning, and you pointed to some of them 21 that Dalton couldn't answer, is that correct?</p> <p>22 A I think we went through which 23 ones.</p> <p>24 Q Yes, you did. I am not going to 25 do that again.</p> <p>LEX REPORTING SERVICE 800-608-6085</p>
<p>1 Dawley 102</p> <p>2 Q There were sixty-one of them is 3 that, correct? We just counted up 4 approximately.</p> <p>5 A I don't know how many there were.</p> <p>6 Q You didn't add them, but assuming 7 that we add the numbers I am coming to 8 sixty-one. Maybe there is one or two less or 9 more or whatever.</p> <p>10 Isn't that an excessive amount of 11 journal entries?</p> <p>12 MR. TRAUB: Again objection 13 to the misuse of the term journal 14 entry.</p> <p>15 Q Journal entry, suggestion for 16 adjustments.</p> <p>17 MR. TRAUB: Again same 18 objection.</p> <p>19 Q Isn't that a lot of suggestions to 20 the accountant that make these changes, isn't 21 that lot of them?</p> <p>22 A I don't think so.</p> <p>23 Q In your experience that is not 24 excessive?</p> <p>25 A Not when you change the books from LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 104</p> <p>2 But you have no recollection of 3 receiving that, is that correct?</p> <p>4 A No, I don't remember.</p> <p>5 MR. HAYWOOD: Now, I am 6 going to show you Exhibit 2 from 7 the deposition of February 3, 8 2008, which we will mark today as 9 Plaintiff's Exhibit 4. (A response to questions posed in Exhibit 3 was marked as Plaintiff's Exhibit 4, for identification, as of this date.)</p> <p>10 A Okay.</p> <p>11 Q Is that a response to the 12 questions that were posed in Exhibit 3?</p> <p>13 A It appears to be, yes.</p> <p>14 Q Now, the question was posed on 15 what day, May 10, 2007?</p> <p>16 A That's Exhibit 3, yes.</p> <p>17 Q Do you recall whether or not that 18 was a Thursday?</p> <p>19 A (No verbal response.)</p> <p>LEX REPORTING SERVICE 800-608-6085</p>

<p>1 Dawley 105</p> <p>2 Q You don't recall?</p> <p>3 A No.</p> <p>4 Q If I suggest to you that was a Thursday, is it reasonable to presume that Dalton would receive that response on Friday on the 11th?</p> <p>8 MR. TRAUB: Objection to form.</p> <p>10 Did he receive the Exhibit?</p> <p>11 Q It is reasonable to presume that Dalton, would have received that request made to it at least on the 11th?</p> <p>14 MR. TRAUB: You're talking about Exhibit 3?</p> <p>16 MR. HAYWOOD: Yes.</p> <p>17 A I don't know when I got it. Could have been the next day, could have been the day after. It depends whether Neale was in or not because it was addressed to her.</p> <p>21 Q On a Saturday or Sunday?</p> <p>22 A She is not there a lot of times on Friday, so I don't know.</p> <p>24 Q But the answer was produced on the 15th, is that correct?</p> <p style="text-align: center;">LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 107</p> <p>2 A No.</p> <p>3 Q Do you have any idea who would have an idea?</p> <p>5 A No.</p> <p>6 Q With the exception of the loan documents?</p> <p>8 A Right.</p> <p>9 Q Is this information that the accountant should have had?</p> <p>11 A You mean Marks, Paneth & Shron?</p> <p>12 Q Who is the accountant?</p> <p>13 A Well, I don't understand what you're asking.</p> <p>15 Q Isn't that Dalton's accountant?</p> <p>16 A Dalton is the property managing agent, yes.</p> <p>18 Q Are they the accountant for this account?</p> <p>20 A They take care of books and records, yes.</p> <p>22 Q They are the accountant?</p> <p>23 A Right.</p> <p>24 Q Their work is reviewed by an auditor?</p> <p style="text-align: center;">LEX REPORTING SERVICE 800-608-6085</p>
<p>1 Dawley 106</p> <p>2 A Yes, it was. That's the date on the Exhibit 4.</p> <p>4 Q If the 11th was a Thursday then the 15th would have been Monday, is that correct?</p> <p>7 A I think that's right.</p> <p>8 Q The request from Cameron, Pryce & Griffiths was to Dalton originally, correct?</p> <p>10 A Correct, right.</p> <p>11 Q It would appear that the request was immediately sent to Marks, Paneth & Shron for response, is that correct?</p> <p>14 MR. TRAUB: Objection.</p> <p>15 A I don't know.</p> <p>16 Q Well, the response came from Marks, Paneth & Shron, is that correct?</p> <p>18 A Yes.</p> <p>19 Q So is it reasonable to presume that whoever got it at Dalton said give it to Marks, Paneth & Shron?</p> <p>22 MR. TRAUB: Objection to form.</p> <p>24 A They could have. I don't --</p> <p>25 Q You have no idea?</p> <p style="text-align: center;">LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 108</p> <p>2 A Yes.</p> <p>3 Q Marks, Paneth & Shron is the auditor?</p> <p>5 A Yes.</p> <p>6 Q The auditor sent in a team of maybe fourteen people every now and then, they look at your books and records and they make suggestions based on their inquiry investigation to you as to journal adjustments, is that correct?</p> <p>12 A Yes.</p> <p>13 Q Then as I understand the process, but correct me I am not an accountant, you get to talk to the auditor and say, "Well, we agree with this and this and this and this, but not that," but basically this is the accountant's work. The auditor is only making commentary and suggesting changes, is that correct?</p> <p>21 A Yes.</p> <p>22 Q In the keeping of these accounts, is it not the case that it is the primary accountant here, Dalton, who's supposed to have all these back up material that Cameron,</p> <p style="text-align: center;">LEX REPORTING SERVICE 800-608-6085</p>

<p>1 Dawley 109</p> <p>2 Pryce & Griffiths is talking about, isn't that 3 correct?</p> <p>4 MR. TRAUB: Objection to the 5 form.</p> <p>6 A You say we are supposed to have?</p> <p>7 Q I don't know. I am not an 8 accountant, sir. You tell me.</p> <p>9 A No, that was your question.</p> <p>10 Q Well, my question is isn't the 11 accountant supposed to have it?</p> <p>12 A We can have -- we have some of the 13 other information, but I don't know if we have 14 all of the information. I know we do have 15 copies of all their work papers.</p> <p>16 Q Let me ask you this, why would the 17 auditor, have any of the papers which are the 18 form and fabric of the affairs of Dalton 19 Management? Why would the auditor, who comes 20 in merely to look at it and make suggestions, 21 why would they have any of the papers?</p> <p>22 A The auditor has to have support in 23 their work papers in order to justify the 24 balances that they report on the financial 25 statements. So they are going to have support</p> <p>LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 111</p> <p>2 adjustment to convert the accounting 3 information from cash to accrual in order to 4 produce the financial statement.</p> <p>5 Q But they were just asking for 6 documentation then in the communication of May 7 10th, isn't that so?</p> <p>8 A Okay.</p> <p>9 Q They are asking for documentation?</p> <p>10 A They asked for the finalized 11 figure.</p> <p>12 For example, Number 5 for accounts 13 payable that was used in the audited financial 14 statement, we don't maintain our books on an 15 accrual basis so we don't have the back up for 16 that specific number broken out the same way 17 as they do, because they put it on an accrual 18 basis. We are on a cash basis. That at the 19 end of the year what they have on accounts 20 payable is never going to agree with what we 21 have, because they have to make adjustments to 22 it to pick up expenses that came in after the 23 end of the year in January that were for 24 December. They have to be added back in as an 25 expense in December and that's included in the</p> <p>LEX REPORTING SERVICE 800-608-6085</p>
<p>1 Dawley 110</p> <p>2 in their work papers for all the different 3 entries -- I mean all the different balances. 4 They have to have that.</p> <p>5 Q Where do they get that supporting 6 documentation?</p> <p>7 A From us.</p> <p>8 Q Which means that you don't just 9 take your records and give it to them 10 wholesale, do you? I mean you make copies and 11 supply them to them, right?</p> <p>12 A Auditors come into the office and 13 they review our books and records. We make 14 copies of whatever they need, they put it into 15 their work paper, finalize it and produce the 16 audited financial statement.</p> <p>17 Q But the originals of the 18 documentation are still with Dalton, is that 19 correct?</p> <p>20 A That's correct.</p> <p>21 Q That being so why would the 22 request from Cameron, Pryce & Griffiths of May 23 10th have been almost immediately sent to 24 Marks, Paneth & Shron?</p> <p>25 A Because they had the adjustment,</p> <p>LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 112</p> <p>2 accounts payable.</p> <p>3 Q Again getting back to my previous 4 question to you, you would never know what was 5 going on financially by simply looking at 6 Dalton's books, is that correct?</p> <p>7 MR. TRAUB: Objection to the 8 form.</p> <p>9 MR. KELLY: Objection to the 10 form.</p> <p>11 A If you're familiar with the 12 accounting method of cash and accrual, you 13 should be able to as an educated accountant to 14 determine how it was adjusted from cash to 15 accrual.</p> <p>16 Q So that you don't understand the 17 request of May 10th, made by Cameron, Pryce & 18 Griffiths, to be a request for document to 19 support things?</p> <p>20 MR. TRAUB: Objection to 21 form.</p> <p>22 Q You say that they are asking for a 23 finalized number in that request?</p> <p>24 A What they are asking for is a 25 list. For example, Number 5 accounts payable,</p> <p>LEX REPORTING SERVICE 800-608-6085</p>

<p>1 Dawley 113</p> <p>2 that would be a list of expenses that are not 3 paid at the end of the year. They asked for 4 the specific expenses that made up that number. Our books are on a cash basis not 5 accrual. That's accrual adjustments. So 6 Marks, Paneth & Shron in their work papers 7 would have a sheet for that particular account 8 that would also for their review people to 9 determine if what the amount was and that it 10 was, you know, produced on the financial 11 statement.</p> <p>12 Q But they got all the documentation 13 from you, from Dalton?</p> <p>14 A They got all the information of checks that we wrote and the invoices that came in. After the end of the year we gave those to them, so it could be converted to accrual.</p> <p>15 Q You maintain copies of them?</p> <p>16 A We maintain the originals.</p> <p>17 Q So the information that Cameron, Pryce & Griffiths asked you for it was in Dalton's files, is that correct?</p> <p>18 A It was there for their review and LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 115</p> <p>2 A They want a specific figure that 3 will tie in with the financial statement. 4 Marks, Paneth & Shron has a work paper on that 5 particular account, that will show exactly 6 what the amount was which will tie in exactly 7 with the financial at the same time.</p> <p>8 Q They would never find that 9 information from simply talking to Dalton?</p> <p>10 A Not by talking to us. They would 11 have to go through and review all the checks 12 that were written after the end of the year, 13 look at all the invoices and determine whether 14 those invoices were for expenses incurred 15 prior to the end of the year and then they 16 would have to put them on accrual.</p> <p>17 Q If I said to you William Jennings 18 was of the opinion that Dalton could have 19 responded to that request, would you disagree 20 with that statement?</p> <p>21 A We could have, but it would have 22 taken quite some time.</p> <p>23 Q Now, in the course of the inquiries made by Cameron, Pryce & Griffiths, 24 did anyone say to them at some point that, LEX REPORTING SERVICE 800-608-6085</p>
<p>1 Dawley 114</p> <p>2 they can go through and they could look it up. 3 If they were doing an audit then they would be 4 produced. They should be doing the same 5 function that Marks, Paneth & Shron did by 6 looking at expenses that were paid for after 7 the end of the year that should have been 8 accrued and if they went through that they 9 would have found those same documents. They 10 would have made the same determination and 11 could have come up with the same figure.</p> <p>12 Q Why did you, Dalton, refer them to 13 Marks, Paneth & Shron to see documents that 14 were in position of the Dalton?</p> <p>15 A I was trying to cut the amount of time down, they were going to have to spend to find the same information.</p> <p>16 Q You were anticipating that they 17 wanted information as opposed to the specifics of what they were asking you for, is that 18 correct?</p> <p>19 A I don't understand that.</p> <p>20 Q You said, "Hey look, it will save them time to go get this from Marks, Paneth & Shron, is that correct?</p> <p>21 LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 116</p> <p>2 "Look, you have to get this information from Marks, Paneth & Shron, the auditor and you're going to have to pay them for their time," did anyone say that to them?</p> <p>3 MR. TRAUB: Objection to form.</p> <p>4 Q To your knowledge, did anyone say that to them?</p> <p>5 A I didn't say that to them.</p> <p>6 Q Do you know if anyone else said that to them?</p> <p>7 A I don't know.</p> <p>8 Q Are you knowledgeable if a letter was sent to them saying that?</p> <p>9 A No.</p> <p>10 Q Did you read the pleadings in this case at all before coming here today?</p> <p>11 A No.</p> <p>12 Q You didn't?</p> <p>13 A No.</p> <p>14 Q It did not come to your attention that a communication was sent by Cameron, Pryce & Griffiths in or around November, indicating that someone at Dalton had told LEX REPORTING SERVICE 800-608-6085</p>

<p>1 Dawley 117</p> <p>2 them that to get this information they had to 3 go to Marks, Paneth & Shron and that they 4 would have to pay Marks, Paneth & Shron, that 5 never came to your information or attention?</p> <p>6 MR. TRAUB: Objection to the 7 form.</p> <p>8 A The information that they 9 requested, specifically the balance on 10 accounts payable, would be easily obtained 11 from Marks, Paneth & Shron's work papers or 12 that they requested to be compensated for 13 that, I don't remember whether they requested 14 to be compensated for that. I don't remember.</p> <p>15 Q Did anyone from Dalton tell 16 Cameron, Pryce & Griffiths you have to pay to 17 get that from them?</p> <p>18 A I don't remember.</p> <p>19 Q Who were the persons who dealt 20 with Cameron Pryce and Griffiths aside from 21 yourself at Dalton?</p> <p>22 A The accounts payable Veronica 23 Mackenzie. I think Alonzo Rodgers provided 24 them with some information. I believe I asked 25 Joan Mondesir to come up with some compliance</p> <p style="text-align: center;">LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 119</p> <p>2 from the work paper that Marks, Paneth & Shron 3 would have produced then trying to go back 4 through and pull out all of the invoices that 5 were there. In a proper audit, if you were 6 doing an audit, you wouldn't look to an 7 auditor's work papers. You would do your own 8 investigation, make your own determination and 9 looking through the invoices that were readily 10 available and determine whether or not that 11 figure was correct.</p> <p>12 Q When you say you, are you 13 referring to --</p> <p>14 A I am referring to Cameron, Pryce & 15 Griffiths.</p> <p>16 Q That they should have looked at 17 the auditor's papers?</p> <p>18 A They had all the information 19 available. If they wanted to determine what 20 the accounts payable, in their opinion, should 21 be at the end of the year they could very 22 easily have gone through all the invoices that 23 were there and made a calculation of which 24 ones were appropriate to be classified as a 25 payable at the end of the year and then if</p> <p style="text-align: center;">LEX REPORTING SERVICE 800-608-6085</p>
<p>1 Dawley 118</p> <p>2 issues and I think we had a -- we had a rent 3 increase that she had.</p> <p>4 Q Would any of those persons have 5 had the authority to say to the auditors, that 6 you have to pay Marks, Paneth & Shron for 7 their time in order to go to them and get the 8 information?</p> <p>9 A I can't imagine any one of them 10 saying anything like that.</p> <p>11 MR. HAYWOOD: I withdraw 12 that question.</p> <p>13 Q Is it not the case that most of 14 the material that Cameron, Pryce & Griffiths 15 were asking for they were being referred to 16 Marks, Paneth & Shron to get it?</p> <p>17 MR. TRAUB: Objection.</p> <p>18 Q Isn't that what took place here?</p> <p>19 MR. TRAUB: Objection to the 20 form.</p> <p>21 Do you understand the 22 question?</p> <p>23 A Some of the information on some of 24 the accounts, specifically the account payable 25 account was -- would be more easily obtained</p> <p style="text-align: center;">LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 120</p> <p>2 there was a discrepancy maybe then we could 3 have talked about what the amount was and 4 researched that, but that wasn't the case.</p> <p>5 Q Did Marks, Paneth & Shron have all 6 of the documentation that Dalton maintained?</p> <p>7 A No.</p> <p>8 Q They only have things that their 9 auditors pulled out selectively, correct?</p> <p>10 A Yes.</p> <p>11 Q So that can I assume that when 12 Cameron, Price & Griffiths went to you and 13 looked at these documents that for the most 14 part they were asking for the exact same 15 selections that Marks, Paneth & Shron had 16 asked you for, is that correct?</p> <p>17 MR. TRAUB: Objection to the 18 form.</p> <p>19 You mean in these letters or 20 over the six months?</p> <p>21 Q Over the six months they were 22 constantly asking for the same information 23 that Marks, Paneth & Shron had selected and 24 pulled out?</p> <p>25 A We didn't presume to chose the</p> <p style="text-align: center;">LEX REPORTING SERVICE 800-608-6085</p>

<p>1 Dawley 121</p> <p>2 invoices. My accounts payable person wouldn't 3 begin to do that. Their determination would 4 not be considered as to what would be a proper classification of a expenditure and a payable 5 for the end of the year. She would provide 6 access to all the invoices we paid. We would 7 -- we would provide access to all the checks 8 that were written and any checks that was 9 written there would be an invoice for it that 10 would be reviewable to determine whether that 11 was a year end expense or a new year expense 12 and all that information was there and readily 13 available.</p> <p>14 Q Dalton does not compile its own 15 financial statement before Marks, Paneth & 16 Shron issues one?</p> <p>17 MR. KELLY: Objection to the 18 form.</p> <p>19 A What do you mean?</p> <p>20 Q Does Dalton compile its own 21 financial statement and say, "Look, on the 22 cash basis this is our financial statement. 23 This is what we have." Then do you convey that 24 to Marks, Paneth & Shron or do you just take 25 LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 123</p> <p>2 income and expense income statement on a cash 3 or accrual basis. The reason they have that 4 option is because a lot of partners don't care 5 about accruals. They don't care how much 6 money you're billed. You bill the tenants. 7 They want to know -- only know how much money 8 you got in, how much money is spent and how 9 much money you have at the end of the month 10 for distribution to partners, so you'll find 11 that a lot of property management companies 12 provide a cash basis income and expense 13 monthly statement to the partners so that they 14 can determine how the cash is run.</p> <p>15 Q Dalton does that?</p> <p>16 A We do that on a cash basis.</p> <p>17 Q Is there any reason why you 18 couldn't also provide an accrual statement, so 19 that your work would be congruent with what 20 Marks, Paneth & Shron is doing?</p> <p>21 A With BJ Murray we chose to do it 22 on a cash basis and only convert once a year.</p> <p>23 Q By giving the ingredients to 24 Marks, Paneth & Shron?</p> <p>25 A To make that statement. LEX REPORTING SERVICE 800-608-6085</p>
<p>1 Dawley 122</p> <p>2 all the accumulated data and pass it all to 3 Marks, Paneth & Shron for them to finalize? 4 Which of those methods do you follow?</p> <p>5 MR. KELLY: Objection to 6 form.</p> <p>7 A We provide the activity for the 8 entire year on a cash basis to Marks, Paneth & 9 Shron for review.</p> <p>10 Q Is there a reason that you 11 wouldn't keep your books on an accrual basis, 12 so that it would be congruent to what they are 13 doing?</p> <p>14 MR. TRAUB: Objection to 15 form.</p> <p>16 Who is they?</p> <p>17 Q To what Marks, Paneth & Shron are 18 doing there on an accrual basis, you're doing 19 it on a cash basis. Wouldn't it make more 20 sense if you converted to an accrual basis 21 only, so your work would be consonant with 22 their work?</p> <p>23 A With the new Yardi System, the new 24 software that we have been converting over to, 25 you have the option of producing an in-coming LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 124</p> <p>2 Q By making no financial statement 3 yourself, by depending on Marks, Paneth & 4 Shron to complete the final statement, is that 5 correct, the only statement?</p> <p>6 MR. TRAUB: Objection to 7 form.</p> <p>8 MR. KELLY: Objection to 9 form.</p> <p>10 MR. HAYWOOD: I will 11 withdraw it.</p> <p>12 Q The only end financial statement 13 being composed here is that of auditors Marks, 14 Paneth & Shron, is that correct?</p> <p>15 MR. TRAUB: Objection to 16 form.</p> <p>17 MR. KELLY: Objection to 18 form.</p> <p>19 A We produce on a monthly basis. 20 That is -- that is also included in the files 21 a financial statement on the cash basis.</p> <p>22 MR. TRAUB: I think this is 23 a good time for a break.</p> <p>24 Q Under the terms of your management 25 contract, does it say that you should produce LEX REPORTING SERVICE 800-608-6085</p>

<p>1 Dawley 125</p> <p>2 your records under one form or the other?</p> <p>3 A Not that I know of.</p> <p>4 Q Under the terms of the DHCR</p> <p>5 contract, does it restrict the amounts of</p> <p>6 money that are payable to the managing</p> <p>7 company?</p> <p>8 A DHCR, as well as all the other</p> <p>9 agencies; HPD, HDC and HUD, all prescribe what</p> <p>10 the management fee is to be. The amount of</p> <p>11 the management fee on Fifth and 106th, DHCR</p> <p>12 actually has a form that they tell us how much</p> <p>13 we can pay. It's not calculable. It's a</p> <p>14 specific amount.</p> <p>15 Q Are there not contracts, which say</p> <p>16 how much money Dalton Management is supposed</p> <p>17 to receive from each development in a year?</p> <p>18 A There is a management contract on</p> <p>19 DHCR that they approve that they gave us.</p> <p>20 It's like four years old now of how much we</p> <p>21 can take out as a management fee.</p> <p>22 Q Does it also prescribe how much</p> <p>23 should be paid to the auditor?</p> <p>24 A I believe there is an agreement in</p> <p>25 there for the auditor.</p> <p style="text-align: center;">LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 127</p> <p>2 Logan. They go through those things with a</p> <p>3 fine tooth comb and we don't have any</p> <p>4 irregularities from any of those auditors.</p> <p>5 Q How much was Marks, Paneth & Shron</p> <p>6 supposed to be paid in 2006 under the terms of</p> <p>7 its auditing contract?</p> <p>8 MR. TRAUB: Objection to the</p> <p>9 form.</p> <p>10 MR. KELLY: Objection to the</p> <p>11 form.</p> <p>12 A I couldn't tell.</p> <p>13 Q If I suggest it was \$34,000.00</p> <p>14 would that refresh your recollection?</p> <p>15 MR. TRAUB: Objection to</p> <p>16 form.</p> <p>17 If you want to show him the</p> <p>18 document you can.</p> <p>19 MR. HAYWOOD: I asked him</p> <p>20 if it would refresh his</p> <p>21 recollection.</p> <p>22 A I don't remember.</p> <p>23 Q If I suggest to that you that</p> <p>24 Marks, Paneth & Shron received \$108,000.00 in</p> <p>25 2006, would that refresh your recollection as</p> <p style="text-align: center;">LEX REPORTING SERVICE 800-608-6085</p>
<p>1 Dawley 126</p> <p>2 Now, we have been reviewed by DHCR</p> <p>3 and we are continually reviewed by DHCR. They</p> <p>4 have a representative that comes in to do the</p> <p>5 financial review. They come in a couple of</p> <p>6 times a year and they look through our books</p> <p>7 and records. They look at every check. They</p> <p>8 check anything that they find that they want</p> <p>9 to look at further. They check the invoice.</p> <p>10 Excuse me, I am not done.</p> <p>11 MR. HAYWOOD: I move to</p> <p>12 strike some of this testimony as</p> <p>13 not responsive to my question,</p> <p>14 but go ahead.</p> <p>15 A You asked. I am telling you.</p> <p>16 Q Don't mind that.</p> <p>17 A About seven years ago we paid a</p> <p>18 \$500.00 bonus to our property manager at</p> <p>19 Lakeview. When they came in they caught that</p> <p>20 \$500.00 out of thousands of dollars that go</p> <p>21 out of that company. On a monthly basis, over</p> <p>22 a six month period, it's like three or four</p> <p>23 million. We paid that \$500.00 back. HPD</p> <p>24 comes in on other properties. HDC comes in,</p> <p>25 so we are audited on Church, Charles and</p> <p style="text-align: center;">LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 128</p> <p>2 to the contract amount or the amount that they</p> <p>3 received?</p> <p>4 MR. TRAUB: Again objection</p> <p>5 to form.</p> <p>6 MR. KELLY: Objection.</p> <p>7 MR. TRAUB: If you want to</p> <p>8 show him the contract, show him</p> <p>9 the contract.</p> <p>10 MR. HAYWOOD: I asked for</p> <p>11 his recollection.</p> <p>12 MR. TRAUB: I asked for a</p> <p>13 break for half an hour.</p> <p>14 Q Would that refresh your</p> <p>15 recollection, if I told you that they received</p> <p>16 \$108,000.00 in 2006 and that their contract</p> <p>17 called for \$34,000.00?</p> <p>18 MR. KELLY: Objection.</p> <p>19 MR. TRAUB: Objection to</p> <p>20 form.</p> <p>21 Q Is that your recollection of what</p> <p>22 took place?</p> <p>23 MR. KELLY: Objection.</p> <p>24 MR. TRAUB: Objection to</p> <p>25 form.</p> <p style="text-align: center;">LEX REPORTING SERVICE 800-608-6085</p>

<p>1 Dawley 129</p> <p>2 A First of all, I don't know if they 3 received \$108,000.00 in 2006. If they did in 4 fact receive \$108,000.00 it wouldn't have been just for an audit. It would have also been for the production of a rent increase application.</p> <p>8 Q Do these contracts say that if any 9 sum, in addition to \$5,000.00, is to be paid 10 to the auditor that permission has to be 11 obtained from DHCR to your knowledge?</p> <p>12 MR. TRAUB: Again objection to the form.</p> <p>14 MR. KELLY: Objection to the form.</p> <p>16 A Every expenditure that we get into, where we have a large contract for construction or anything else, we get approved from DHCR.</p> <p>20 MR. HAYWOOD: Move to strike as not responsive.</p> <p>22 Q Do the contracts limit the amount of outside payment in excess of \$5,000.00 without DHCR approval to your knowledge?</p> <p>25 MR. TRAUB: Objection to the LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 131</p> <p>2 don't remember.</p> <p>3 Q Did Dalton's books suggest that 4 \$108,000.00 was paid to Marks, Paneth & Shron 5 in 2006?</p> <p>6 MR. TRAUB: Objection. Asked and answered.</p> <p>8 MR. KELLY: Objection to form.</p> <p>10 MR. TRAUB: He just answered it.</p> <p>12 A I don't know.</p> <p>13 Q You don't know, fine. Is it not the fact that the 15 financial statement, simply reported fees 16 being paid to Marks, Paneth & Shron for 17 \$34,000.00 and that the other money was listed 18 in the financial statement, the final 19 statement as consultant and other expenses?</p> <p>20 MR. TRAUB: Objection to the form.</p> <p>22 MR. KELLY: Objection to the form.</p> <p>24 Q Is that your recollection? 25 A (No verbal response.) LEX REPORTING SERVICE 800-608-6085</p>
<p>1 Dawley 130</p> <p>2 form. 3 MR. KELLY: Objection to the 4 form.</p> <p>5 A I think it's ten.</p> <p>6 Q I am sorry?</p> <p>7 A I think it's \$10,000.00.</p> <p>8 Q So more than \$10,000.00 that is to 9 get approval to your recollection?</p> <p>10 A Okay.</p> <p>11 Q Was there any approval issue in 12 2006 that you know about?</p> <p>13 MR. KELLY: Objection.</p> <p>14 MR. TRAUB: Objection to form.</p> <p>16 A I don't remember.</p> <p>17 Q Finally, isn't it a fact that the 18 books of records of Dalton recited in 2006 19 that Marks, Paneth & Shron receive \$108,000.00 20 in that year?</p> <p>21 MR. TRAUB: Objection to form.</p> <p>24 MR. KELLY: Objection to form.</p> <p>25 A I couldn't begin to tell you. I LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 132</p> <p>2 MR. HAYWOOD: We are 3 adjourned for lunch. (Whereupon, a luncheon 5 recess was taken.)</p> <p>6 MR. HAYWOOD: Gentlemen, I 7 want to mark this document as 8 Plaintiff's 5. (A Logan Plaza document was 9 marked as Plaintiff's 10 Exhibit 5, for 11 identification, as of this 12 date.)</p> <p>14 Q With regard, sir, to Plaintiff's 15 5, which is a Logan Plaza Associates document 16 prepared for December 2006, would you look at 17 the document and tell me did you prepare that?</p> <p>18 A It could have been prepared in -- 19 would have been prepared in our office. I 20 don't know if I personally prepared it.</p> <p>21 Q By whom?</p> <p>22 A December 2006 that probably was 23 produced by Veronica Mackenzie. We produce 24 one at the end of each month.</p> <p>25 Q Would that have been conveyed to LEX REPORTING SERVICE 800-608-6085</p>

<p>1 Dawley 133</p> <p>2 Marks Paneth & Shron?</p> <p>3 A Yes.</p> <p>4 Q Do you have any independent</p> <p>5 recollection of its preparation or its</p> <p>6 conveyance to Marks, Paneth & Shron?</p> <p>7 A No.</p> <p>8 Q Did you ever read it before?</p> <p>9 A I don't recall.</p> <p>10 Q Sir, looking at the document I</p> <p>11 direct your attention to the part which is</p> <p>12 somewhat darkened on Page 5. I want you to</p> <p>13 read it and tell me what you understand it to</p> <p>14 say.</p> <p>15 A There are three items. There is</p> <p>16 -- the vendor is Dalton Management, the total</p> <p>17 \$181,927.02.</p> <p>18 Q I direct your attention to the</p> <p>19 earlier testimony when we started this</p> <p>20 morning, is that the \$180,000.00 that you</p> <p>21 testified to earlier this morning?</p> <p>22 A When we were talking about Logan</p> <p>23 Plaza and \$180,000 due to Dalton, yes.</p> <p>24 Q This morning you testified that</p> <p>25 the money was owed to Marion Scott or Prestige</p> <p>LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 135</p> <p>2 does it describe the money?</p> <p>3 A One of the items it says January</p> <p>4 1997 to June of 1997 fees. It says July 1997</p> <p>5 to March 1998 fees and it says April 1998 to</p> <p>6 June 1998 fees.</p> <p>7 Q Does it further characterize that</p> <p>8 money as to what it is?</p> <p>9 A What do you mean characterize?</p> <p>10 Q Well, does it say anything else</p> <p>11 about the money?</p> <p>12 A It's unpaid.</p> <p>13 Q Does it say anything else about</p> <p>14 the money?</p> <p>15 A I don't know what you're asking.</p> <p>16 Q Is there any other identifying</p> <p>17 feature in that information concerning that</p> <p>18 money?</p> <p>19 MR. TRAUB: Other than what</p> <p>20 he's testified about?</p> <p>21 MR. HAYWOOD: Yes.</p> <p>22 A I don't see anything.</p> <p>23 Q I direct your attention to the</p> <p>24 column on the extreme left, sir, under the</p> <p>25 heading of vendor.</p> <p>LEX REPORTING SERVICE 800-608-6085</p>
<p>1 Dawley 134</p> <p>2 or Grenadier Management, is that correct?</p> <p>3 A Yes.</p> <p>4 Q That one of the Seavey's had</p> <p>5 discussed that with you, is that correct?</p> <p>6 A Yes.</p> <p>7 Q And William Jennings, this had</p> <p>8 come to his attention and he discussed it and</p> <p>9 gave certain advice with regard to it, is that</p> <p>10 correct?</p> <p>11 MR. TRAUB: Objection to the</p> <p>12 form.</p> <p>13 Q Was that pretty much what you</p> <p>14 testified to?</p> <p>15 A Well, advice to who?</p> <p>16 Q To the Seavey's I presume. I</p> <p>17 don't know.</p> <p>18 A It's my understanding he indicated</p> <p>19 what would transpire if they were to write it</p> <p>20 off, yes.</p> <p>21 Q This was money which originated</p> <p>22 some time before the year 2000 I assume, is</p> <p>23 that correct?</p> <p>24 A As far as I know, yes.</p> <p>25 Q Now, looking at that document how</p> <p>LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 136</p> <p>2 A Yes, we already discussed that it</p> <p>3 was Dalton Management.</p> <p>4 Q So that if someone were to look at</p> <p>5 that document by way of audit or anything else</p> <p>6 they would conclude that this was money owed</p> <p>7 to Dalton Management, is that correct?</p> <p>8 MR. TRAUB: Objection to the</p> <p>9 form.</p> <p>10 Are you asking him what</p> <p>11 someone would conclude other than</p> <p>12 him?</p> <p>13 Q Well, the document says that the</p> <p>14 money is owed to Dalton Management, isn't that</p> <p>15 correct?</p> <p>16 A This is a list of unpaid, which is</p> <p>17 payables that shows that there is 181,927.02</p> <p>18 that is unpaid that is due to Dalton</p> <p>19 Management.</p> <p>20 Q But isn't that the same money that</p> <p>21 you testified earlier this morning was owed to</p> <p>22 either Prestige or Marion Scott or Grenadier</p> <p>23 Management?</p> <p>24 A That's correct.</p> <p>25 Q You knew it was owed at that time</p> <p>LEX REPORTING SERVICE 800-608-6085</p>

<p>1 Dawley 137</p> <p>2 to one of those three organizations, is that 3 correct?</p> <p>4 A Yes.</p> <p>Q William Jennings knew it was owed to one of those three organizations at that time, is that correct?</p> <p>8 MR. TRAUB: Objection to the form.</p> <p>10 A I don't know what Bill knows.</p> <p>11 Q Well, he certainly had discussed the matter with one of the Seavey's according to your testimony, is that correct?</p> <p>14 A What I was told is that Bill Jennings told them, the Seavey's, that there was an amount due of \$181,000.00 and that if they wanted to write it off they would have to pick it up as income, 'cause it had been taken as an expense in those prior years.</p> <p>20 Q Sir, did you or anyone at Marks, Paneth & Shron have the consciousness at the time this entry was generated that this money was not owed to Dalton management, but that it was owed to either Grenadier Marion Scott or Prestige?</p> <p style="text-align: center;">LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 139</p> <p>2 knew that there was an amount that had been expensed in prior years that was due and in the same amount. So we classified it as due to Dalton, because if we didn't classify it as a payable it would have to be picked up as income and each of the partners would have to pick up \$90,000.00 of income so Dalton was used as the vendor to be payable to.</p> <p>10 Q Look, and I know I am not an accountant; but if I owe money to Abraham & Strauss and to Bloomingdales and I know that they haven't come around to pick up that money can I carry it on my books as a receivable payable to Macys?</p> <p>16 MR. TRAUB: Objection to form.</p> <p>18 MR. KELLY: Objection to form.</p> <p>20 MR. TRAUB: Improper hypothetical.</p> <p>22 A I really don't know what you're trying to ask. I have tried to answer this every way that I can.</p> <p>25 Q I will ask it again. LEX REPORTING SERVICE 800-608-6085</p>
<p>1 Dawley 138</p> <p>2 MR. TRAUB: Objection to form.</p> <p>4 MR. KELLY: Objection to form.</p> <p>6 MR. TRAUB: Already asked and answered.</p> <p>8 A You got to ask it again. I got too many objections. I forgot what you asked.</p> <p>10 MR. HAYWOOD: Asked and answered is not an objection anymore.</p> <p>13 Q Didn't you know when you looked at that entry and Dalton's name was on it and didn't William Jennings or somebody at Marks, Paneth & Shron know when they looked at that entry that this money being listed as owed to Dalton was in fact not owed to Dalton?</p> <p>19 MR. TRAUB: Objection to form.</p> <p>21 Asked and answered.</p> <p>22 MR. KELLY: Objection to form.</p> <p>24 A When this was put on the books it was -- we knew it was owed to Dalton, but we</p> <p style="text-align: center;">LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 140</p> <p>2 A We discussed it, I mean, forever.</p> <p>3 Q Suppose I was the accountant or the auditor and I wrote my name as the vendor on that receivable, wouldn't that suggest that at some point in time that money could possibly be collected by me?</p> <p>8 MR. TRAUB: Objection to the form.</p> <p>10 MR. KELLY: Objection to form.</p> <p>12 MR. TRAUB: It calls for a legal conclusion.</p> <p>14 A No, it calls for an accounting conclusion. You have your objection.</p> <p>16 Q Wouldn't that create a precondition for somebody to come around and say give the money to Haywoode and be done with it?</p> <p>20 A Your hypotheticals are great.</p> <p>21 Q Are they true? I don't want to be great. I want it to be true.</p> <p>23 A That isn't the situation the Yankees and Mets, A&S and Bloomingdales, that isn't even considered.</p> <p style="text-align: center;">LEX REPORTING SERVICE 800-608-6085</p>

<p>1 Dawley 141</p> <p>2 Dalton Management I was told had 3 an agreement with John Edmonds. They were 4 going to if they got the money and they paid 5 it they would split it 50/50. Now, we could 6 have put John Edmonds on that too and he would 7 have made the same agreement to pay Dalton 8 their 50 percent, didn't make any difference 9 to me one way or the other.</p> <p>10 MR. HAYWOOD: I move to 11 strike that part of the testimony 12 which is speculation as to what 13 was done here.</p> <p>14 MR. TRAUB: I think it was a 15 hypothetical. I think it 16 answered your hypothetical.</p> <p>17 MR. HAYWOOD: I appreciate 18 it's a hypothetical answer.</p> <p>19 A Better than the Mets and the New 20 York Yankees.</p> <p>21 Q Let's deal with what we know. 22 Had we put the Mets or the Giants 23 or the Cardinal's name as the vendor on that 24 deck, that would have been the first predicate 25 step to transferring \$181,000.00 to the Mets, LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 143</p> <p>2 I can put down Goofy. Goofy isn't going to 3 come in and make a claim for \$180,000 if he 4 isn't owed the money.</p> <p>5 Q But you indicated it was the 6 expectation that eventually Dalton would claim 7 the money?</p> <p>8 MR. TRAUB: Objection to 9 form.</p> <p>10 Let him finish his answer 11 before you interrupt him with 12 another question.</p> <p>13 Q Were you finished?</p> <p>14 A No.</p> <p>15 There was an agreement. My 16 understanding was the agreement was between 17 the Seavey's and John Edmonds that the 18 \$180,000 they were both aware of was due to a 19 prior management company. Which one I don't 20 remember, don't care. So they said let's put 21 it on the books and leave it on the books. If 22 we don't leave it on the books then they will 23 each have to pick up \$90,000.00 of income on 24 their taxes. I am not done. By putting this 25 under Dalton, it could have been just as LEX REPORTING SERVICE 800-608-6085</p>
<p>1 Dawley 142</p> <p>2 Giants, Yankees, A&S, M. Douglas Haywoode or 3 anybody else that I named as a vendor. That 4 would have been the first predicate step in 5 establishing a claim to \$180,000, would it not 6 in someone who wasn't owed the money, isn't 7 that so?</p> <p>8 MR. TRAUB: Objection to 9 form and calls for a legal 10 conclusion.</p> <p>11 MR. KELLY: Objection to 12 form.</p> <p>13 MR. HAYWOOD: No, it calls 14 for an accounting conclusion.</p> <p>15 Q As a matter of accounting, isn't 16 that a first step to allow whoever's name you 17 wrote there to come in and claim that money, 18 wouldn't it?</p> <p>19 MR. TRAUB: Again objection 20 to form. It calls for a legal 21 conclusion.</p> <p>22 MR. KELLY: Objection.</p> <p>23 A People can't come in and say you 24 owe me \$100,000.00 without some sort of proof 25 and verification. I can put any name I want. LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 144</p> <p>2 easily been Dalton Edmonds, Edmonds Dalton, 3 could be anything, any combination of the 4 partners, I didn't care, because the partners 5 owned the company. The money was due the 6 partners. It wasn't due to the Mets, the 7 Giants, the Yankees or anybody else. Nobody 8 else's name appeared there. It was only 9 Dalton and their agreement was, as I 10 understood that agreement, that they would 11 split the funds so they were partners. It 12 didn't make any difference to me one way or 13 the other.</p> <p>14 Q Well, sir, do you agree with me 15 that the worker accounting at some point is 16 tangent to reality and the truth?</p> <p>17 MR. TRAUB: Objection to the 18 form.</p> <p>19 MR. KELLY: Objection to the 20 form.</p> <p>21 Q Do you agree with me that what I 22 do as an accountant has got to be true 23 somewhere either in the world of accruals or 24 in the world of cash?</p> <p>25 MR. TRAUB: Objection to LEX REPORTING SERVICE 800-608-6085</p>

<p>1 Dawley 145</p> <p>2 form.</p> <p>3 Q Got to be the truth, right?</p> <p>4 A Simple answer, yes.</p> <p>Q So that it was not true that</p> <p>Dalton owned that money was it?</p> <p>MR. TRAUB: Objection to the form.</p> <p>MR. KELLY: Objection.</p> <p>MR. TRAUB: Asked and answered.</p> <p>MR. HAYWOOD: That's not an objection asked and answered.</p> <p>MR. TRAUB: I don't need you to argue with me about my objections.</p> <p>MR. HAYWOOD: You make it repeatedly, but that's not an objection that you're allowed to make.</p> <p>MR. TRAUB: Let me tell you I am here to do three things; number one, make sure that your questions are appropriate and clear. Number two, keep you from LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 147</p> <p>deposition. We hear the questioner's voice and the witness's voice and the attorney's voice saying objection or I won't allow him to answer. If it isn't that you shouldn't be speaking, Darren.</p> <p>MR. TRAUB: I made my objection. You decided to make it into something else. For whatever reason you want to argue with me.</p> <p>MR. HAYWOOD: I want to get out of here some time.</p> <p>MR. TRAUB: Stop responding to my objections, because I am not making them for you.</p> <p>MR. HAYWOOD: What was the last question?</p> <p>The only objection that you make for the record is I object to it and you might say it's not relevant if you wish.</p> <p>MR. TRAUB: I can say asked LEX REPORTING SERVICE 800-608-6085</p>
<p>1 Dawley 146</p> <p>badgering the witness with the same question for over an hour and three, to protect the integrity of the record. I think I am doing a good job with all of that in keeping you in line. When I make an objection you don't need to argue with me about my objections.</p> <p>MR. HAYWOOD: Just say I object and the witness is directed to answer or the witness may not answer. That is what the new regulations are about.</p> <p>MR. TRAUB: My objection doesn't need you to respond to me.</p> <p>MR. HAYWOOD: Your objections should not be on this record in depth. Lawyers objections, yours or mine, should not be having colloquy on the record. It has nothing to do with the purpose of this LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 148</p> <p>and answered.</p> <p>MR. HAYWOOD: It's not relevant, that's it.</p> <p>MR. TRAUB: I am allowed to say asked and answered.</p> <p>Are you debating with me? He's here to answer your questions and I am here --</p> <p>MR. HAYWOOD: I am not debating with you.</p> <p>Read back my last question. (Whereupon, the requested portion was read back by the reporter.)</p> <p>A That's true, yes.</p> <p>Q The statement is a fiction?</p> <p>MR. TRAUB: Objection.</p> <p>Q It wasn't true?</p> <p>MR. TRAUB: Objection to the form.</p> <p>MR. KELLY: Objection to the form.</p> <p>Q It wasn't true?</p> <p>MR. TRAUB: Objection to the LEX REPORTING SERVICE 800-608-6085</p>

1	Dawley	149	1	Dawley	151
2	form.		2	MR. KELLY: Objection.	
3	MR. KELLY: Objection to the		3	A I don't know what they knew.	
4	form.		4	Q William Jennings had discussed it	
5	Q It wasn't true?		5	with one of the Seavey's, is that correct?	
6	MR. TRAUB: You can answer		6	A That's correct.	
7	the question.		7	Q \$181,000.00 just passed along for	
8	A I know, but --		8	eight years and is still passing along waiting	
9	MR. TRAUB: You don't need		9	for someone to lay claim to it, is that	
10	to repeat the question every time		10	correct?	
11	we make an objection.		11	A It's waiting for the partners to	
12	Q It wasn't true?		12	make a decision on what they are going to do	
13	MR. TRAUB: Objection to the		13	with it.	
14	form.		14	Q You say it's lawful for the	
15	MR. KELLY: Objection to the		15	partners to defer that decision ad infinitum?	
16	form.		16	MR. HAYWOOD: Objection.	
17	A This statement, that one line		17	MR. KELLY: Objection.	
18	item, is a line item that you spoke about		18	A I don't know about lawful, but the	
19	Dalton Management that you just asked was not		19	partners can put a payable on the record and	
20	true to Dalton Management and I said that's		20	leave it there. That's up to them.	
21	correct.		21	Q In the intervening period should	
22	Q It wasn't true?		22	any question arise, there is documented	
23	MR. TRAUB: Objection to the		23	evidence provided by Dalton and acquiesced by	
24	form.		24	Marks, Paneth & Shron that the money ought to	
25	MR. KELLY: Objection to the		25	go to Dalton?	
	LEX REPORTING SERVICE			LEX REPORTING SERVICE	
	800-608-6085			800-608-6085	
1	Dawley	150	1	Dawley	152
2	form.		2	MR. KELLY: Objection to the	
3	A It wasn't due to Dalton		3	form.	
4	Management.		4	MR. TRAUB: Objection to the	
5	Q The statement wasn't true, is it		5	form.	
6	fair to say that?		6	Q There is documentary evidence now,	
7	MR. TRAUB: Now, you're		7	whether it's true or not, there is documentary	
8	badgering the witness. You don't		8	evidence that that money ought to go to	
9	have to answer anymore.		9	Dalton?	
10	A Only with regard to that one item.		10	MR. TRAUB: Objection to	
11	Q This item though was reported to		11	form.	
12	the partnership and to DHCR and everybody		12	MR. KELLY: Objection to	
13	else, is that correct?		13	form.	
14	A This doesn't go to DHCR.		14	A The partners agreed the money	
15	Q But it was there for DHCR to		15	should go on the books and if it was ever	
16	review if as you testified previously they		16	written or disbursed off it would be split	
17	came in to review it, was it not?		17	50/50.	
18	A Yes.		18	Q You didn't hear John Edmonds, hear	
19	Q It was given to Marks, Paneth &		19	any agreement with anybody to that effect, is	
20	Shron, correct?		20	that correct?	
21	A Yes.		21	A That's correct.	
22	Q They knew it wasn't true, didn't		22	Q All you know about that is what	
23	they?		23	one of the Seavey's told to you, is that	
24	MR. TRAUB: Objection to the		24	correct?	
25	form.		25	A That's correct.	
	LEX REPORTING SERVICE			LEX REPORTING SERVICE	
	800-608-6085			800-608-6085	

<p>1 Dawley 153</p> <p>2 Q All we know about the facts is 3 that Dalton's name was put on their account, 4 is that correct?</p> <p>5 A That's correct.</p> <p>6 Q John Edmonds has no part of 7 Dalton, is that correct?</p> <p>8 A No, he does not own Dalton.</p> <p>9 Q Is it not a fact that under the 10 terms of the management contract --</p> <p>11 MR. TRAUB: Which management 12 contract?</p> <p>13 Q With the four investments, that 14 front-line manager's costs are to be born by 15 the management company Dalton?</p> <p>16 A No.</p> <p>17 Q Not by the partnership, is that 18 not a fact?</p> <p>19 A No.</p> <p>20 Q What is the actuality of that 21 circumstance?</p> <p>22 A Well, I mean can you be more 23 specific which circumstances?</p> <p>24 Q Well, should the partnership be 25 charged, can the partnership be charged with</p> <p style="text-align: center;">LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 155</p> <p>2 Paragraph I, which reads, except as otherwise 3 provided in this agreement all of the agents 4 home office, bookkeeping, clerical and other 5 management payroll and overhead expenses 6 including, but not limited to cost, office 7 supplies, and equipment, postage, 8 transportation for managerial personnel and 9 telephone services will be born by the agents 10 out of his own funds and will not be treated 11 as project expenses.</p> <p>12 I show you this document and ask 13 you if you recognize it and then your counsel 14 has an objection.</p> <p>15 MR. TRAUB: I would like to 16 mark the entire agreement not 17 just this one page, especially 18 because it says here except as 19 otherwise provided in this 20 agreement. I would like the full 21 agreement on the record since 22 this is something else that 23 appears to be relevant.</p> <p>24 MR. KELLY: I join in that 25 request.</p> <p style="text-align: center;">LEX REPORTING SERVICE 800-608-6085</p>
<p>1 Dawley 154</p> <p>2 central office costs?</p> <p>3 A Yes, in some of the partnerships, 4 not all of them.</p> <p>5 Q Well, with regard to the four 6 investments that John Edmonds has an interest 7 with the Seavey's.</p> <p>8 A Right.</p> <p>9 Q Can the salaries of yourself, Ms. 10 Mondesir and the others be given to the 11 partnerships?</p> <p>12 A What do you mean given?</p> <p>13 Q Should they pay a portion of your 14 salaries?</p> <p>15 MR. KELLY: Objection to 16 form.</p> <p>17 A DHCR does not pay. They only what 18 their agreement calls for. There is nothing 19 over and above that or any calculation or any 20 percentages of the salaries charged to Fifth 21 and 106th Street Associates, which is DHCR.</p> <p>22 Q I show you this page Number 8. I am going to mark this for identification as 24 Plaintiff's Exhibit 6. It's from the Logan 25 Plaza agreement. I direct your attention to</p> <p style="text-align: center;">LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 156</p> <p>2 MR. HAYWOOD: At this 3 point, pursuant to counsel's 4 objection, I am go to ask the 5 court reporter to mark this as 6 Plaintiff's Exhibit 6.</p> <p>7 We are marking the entire 8 housing management agreement of 9 January 3, 2000 with Logan Plaza 10 Associates as Plaintiff's Exhibit 11 6.</p> <p>12 (The entire Logan Plaza 13 housing agreement of 14 1/2/2000 was marked as 15 Plaintiff's Exhibit 6, for 16 identification, as of this 17 date.)</p> <p>18 Q Now, with regard to Exhibit 6, 19 Page 8, we just read.</p> <p>20 A I didn't read it, but that's okay.</p> <p>21 Q I am going to leave it here for 22 you to look at Page 8 and I'm going to take 23 out for the time being Page 5. Just go down 24 two if you will, sir, and get to Page 8 so you 25 can read it.</p> <p style="text-align: center;">LEX REPORTING SERVICE 800-608-6085</p>

<p>1 Dawley 157</p> <p>2 A Just the one paragraph?</p> <p>3 Q Yes, that is just the one that's</p> <p>4 darkened.</p> <p>5 Now, with regard to Page 8 the</p> <p>6 part that we directed your attention to?</p> <p>7 A Right.</p> <p>8 Q That doesn't suggest that the</p> <p>9 project would share in the expenses of the</p> <p>10 central office personnel, does it? And yes or</p> <p>11 no might get along more quickly, but if there</p> <p>12 is an answer for it.</p> <p>13 A This is a two part agreement that</p> <p>14 speaks to the management fee. This was -- HUD</p> <p>15 regulation and calculation applies to all</p> <p>16 three of the projects, Church, Charles and</p> <p>17 Logan. It does not apply to Lakeview or Fifth</p> <p>18 and 106th because they are regulated by DHCR.</p> <p>19 On HUD regulations you're allowed to charge as</p> <p>20 a management fee \$44.00 per unit per-month.</p> <p>21 You're also allowed to charge what's referred</p> <p>22 to as front-line expenditures. Calculation of</p> <p>23 the front-line expenditures is very specific.</p> <p>24 We've been audited on the front-line</p> <p>25 expenditures by both DHCR, HUD and HDC.</p> <p>LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 159</p> <p>2 look at our books and look at every check we</p> <p>3 wrote. We have continued to use that same</p> <p>4 procedure for the last eight plus years, at</p> <p>5 which time we have been audited by all the</p> <p>6 agencies numerous times without any question</p> <p>7 that these were improper or improperly</p> <p>8 calculated. We've continued to use the same</p> <p>9 procedures for the last eight years, which is</p> <p>10 in line with this agreement.</p> <p>11 Q Do you see on Page 5 in Paragraph</p> <p>12 13-B, anything which would support the policy</p> <p>13 that you say Mr. Tefuro told you was</p> <p>14 acceptable?</p> <p>15 MR. TRAUB: Objection to</p> <p>16 form.</p> <p>17 A Let's read it.</p> <p>18 The owner will reimburse the</p> <p>19 agent, which is Dalton Management for</p> <p>20 compensation including fringe benefits,</p> <p>21 payroll taxes, medical expenses, payable to</p> <p>22 front-line management employees such as</p> <p>23 project manager. Our project managers in the</p> <p>24 field, clerical and bookkeeping personnel,</p> <p>25 accounts payable, our compliance officer, our</p> <p>LEX REPORTING SERVICE 800-608-6085</p>
<p>1 Dawley 158</p> <p>2 James Tefuro from HDC was the</p> <p>3 first one that came in. I went through it</p> <p>4 with him personally how to make the</p> <p>5 calculations so they would be acceptable to</p> <p>6 the agencies. His instructions were that you</p> <p>7 took your salary of people that were involved</p> <p>8 in the management of the companies and you</p> <p>9 would divide them by the number of units that</p> <p>10 you managed. You would also take certain</p> <p>11 expenditures that would be allowed to go in as</p> <p>12 a expense and you would allocate those by the</p> <p>13 number of units in each property. Those</p> <p>14 expenses are in addition to salary which is</p> <p>15 one item, payroll taxes, office expenses, ten</p> <p>16 percent of telephone and medical expenses.</p> <p>17 Q Would you spell for the record the</p> <p>18 name of this gentleman who told you this from</p> <p>19 DHCR?</p> <p>20 A T-E-F-U-R-O.</p> <p>21 Q Is he still employed at DHCR?</p> <p>22 A Yes.</p> <p>23 Q When did he tell you this?</p> <p>24 A Just after we took it over in</p> <p>25 2000. He was the first one that came in to</p> <p>LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 160</p> <p>2 payroll clerk, our assistant controller and</p> <p>3 myself all fall under that category.</p> <p>4 Maintenance employees, we didn't have</p> <p>5 in-resident superintendents. We don't have</p> <p>6 any social service directors. We don't have</p> <p>7 any for all state, local and federal taxes,</p> <p>8 payroll taxes including, but not limited to</p> <p>9 social security taxes, employment insurance</p> <p>10 and workman's compensation insurance, all of</p> <p>11 which are included in front-line incident to</p> <p>12 the employment of such personnel, the people I</p> <p>13 so mentioned. Such reimbursements will be</p> <p>14 paid out of the rental agency account and will</p> <p>15 be treated as project expenses. For this</p> <p>16 purpose the rental value of any dwelling unit</p> <p>17 furnished rent free for the resident</p> <p>18 superintendent will not be considered a part</p> <p>19 of their compensation, but will be treated as</p> <p>20 a project expense, which we don't have that</p> <p>21 problem, because we don't have a</p> <p>22 superintendent on our payroll. He's on the</p> <p>23 building payroll.</p> <p>24 MR. HAYWOOD: Sir, I move</p> <p>25 to strike so much of that answer</p> <p>LEX REPORTING SERVICE 800-608-6085</p>

<p>1 Dawley 161 2 which is not responsive to the 3 question. 4 Q Did you say that the paragraph on 5 Page 5 it supports the policy that you just 6 described or does it not? 7 A Supports it. 8 Q It supports it? 9 A Supports it. 10 Q In your interpretation? 11 A Yes. 12 Q You say that front-line personnel 13 such as the superintendent, who's mentioned on 14 Page 5, and the social worker, you say that 15 those people are in the category of persons 16 who would be in the central office? 17 A No. 18 MR. TRAUB: Objection. 19 A I said those people we don't 20 consider, because we don't employ a 21 superintendent on Dalton payroll. We don't 22 employee a social services director on the 23 building payroll. In fact, we don't employ a 24 social services director any place. The 25 superintendent is in each building and is</p> <p style="text-align: center;">LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 163 2 in building management. 3 MR. TRAUB: I don't need you 4 to argue with my objection. 5 MR. HAYWOODE: You know, 6 Darren -- 7 MR. TRAUB: Here you go 8 again. 9 MR. HAYWOODE: You're making 10 them though. I am answering 11 them. None of us should be 12 speaking. Just say I object. 13 MR. TRAUB: I do and then 14 you want to respond to me again. 15 MR. HAYWOODE: But then you 16 gave a reason. You don't need to 17 elaborate. 18 Q In your opinion, sir, you say 19 you're not a lawyer. I am not an accountant. 20 I'm not a fighter pilot. You know, I make 21 common sense judgements. I can't even 22 advise anybody as to the law. I can advise 23 them, but you know. 24 A On Page 8, Item 5 it starts off -- 25 Exhibit says except as otherwise provided in</p> <p style="text-align: center;">LEX REPORTING SERVICE 800-608-6085</p>
<p>1 Dawley 162 2 under a union contract with 32BJ and is paid 3 under that union contract by the building 4 directly. 5 Q So you maintain that the authority 6 or the system that Mr. Tefuro told you about 7 exists in that in that passage of Page 5, 8 which is the item -- 9 MR. TRAUB: 13-B. 10 Q 13-B you say that's the authority 11 for you doing this? 12 A Yes. 13 Q Now, it appears that agreement you 14 just read, given your interpretation and the 15 differences between Page 8 and Page 5, seem to 16 suggest some dissonance, some disparity, does 17 it not? 18 MR. TRAUB: Objection to 19 form. 20 MR. KELLY: Objection to 21 form. 22 MR. TRAUB: Calls for a 23 legal conclusion. 24 MR. HAYWOODE: No, it calls 25 for an opinion by a person who's</p> <p style="text-align: center;">LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 164 2 this agreement. 3 Q Okay. 4 A The except as otherwise provided 5 in this agreement means to me that the -- 6 Q Page 5. 7 A I am looking at that item 13-B is 8 the except as otherwise provided. 9 Q Okay. 10 MR. HAYWOODE: I am going to 11 ask the reporter to mark this 12 document as Plaintiff's Exhibit 13 7, which is the retainer 14 agreement for auditing services 15 from Marks, Paneth & Shron with 16 Fifth and 106th Street 17 Corporation, which would be 18 Plaintiff's Exhibit 7. 19 (A retainer agreement for 20 auditing services from 21 Marks, Paneth & Shron was 22 marked as Plaintiff's 23 Exhibit 7, for identification, as of this 24 date.) 25</p> <p style="text-align: center;">LEX REPORTING SERVICE 800-608-6085</p>

<p>1 Dawley 165</p> <p>2 MR. KELLY: Can we have a 3 year on it?</p> <p>4 THE WITNESS: December 31, 5 2004. This is 2004.</p> <p>6 Q Sir, that's basically the 7 agreement that was made by Marks, Paneth & 8 Shron in 2004 which would have been issued in 9 2005. That's the agreement --</p> <p>10 MR. TRAUB: For which 11 company?</p> <p>12 MR. HAYWOOD: Marks, Paneth 13 & Shron.</p> <p>14 MR. TRAUB: And who?</p> <p>15 MR. HAYWOOD: Fifth and 16 106th Street Associates.</p> <p>17 MR. KELLY: I will object to 18 form.</p> <p>19 Q Has that agreement changed 20 basically for 2006 or is it pretty much the 21 same?</p> <p>22 A I have no idea.</p> <p>23 Q I direct your attention to Page 2, 24 the second part of Paragraph three and ask you 25 to read it and tell me what it says?</p> <p style="text-align: center;">LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 167</p> <p>2 form.</p> <p>3 A This is for Fifth and 106th Street 4 Associates and the \$180,000 at issue is on 5 Logan Plaza.</p> <p>6 Q But DHCR is concerned with Logan 7 Plaza also, is it not?</p> <p>8 A No.</p> <p>9 Q In no way?</p> <p>10 A No.</p> <p>11 Q So that it's your position then 12 that the problem of \$181,000.00, since it was 13 in Logan Plaza and not in Fifth and 106th 14 Street, should not be touched by the purview 15 or the pale of this agreement?</p> <p>16 MR. TRAUB: Objection to the 17 form.</p> <p>18 MR. KELLY: Join.</p> <p>19 A Well, this agreement is a retainer 20 agreement for Fifth and 106th Street 21 Associates not Logan Plaza.</p> <p>22 Q You say that nothing that is said 23 here, ought to apply to anything that has to 24 do with Logan Plaza in your interpretation; 25 that is your position?</p> <p style="text-align: center;">LEX REPORTING SERVICE 800-608-6085</p>
<p>1 Dawley 166</p> <p>2 A Second paragraph says, we will 3 immediately notify DHCR in writing of any 4 indication of noncompliance, legal acts or 5 irregularities with respect to the operation 6 of this housing company. Further, we will 7 provide DHCR with copies of any correspondence 8 issued concerning any errors or significant 9 deficiencies or failures in the design or 10 operation of the internal control structure.</p> <p>11 Written notification to DHCR will also be made 12 of oral communication to the company or its 13 representative concerning any of these 14 matters. However, notification of DHCR need 15 not be made for matters clearly 16 inconsequential to the sound financial 17 operation of the housing company.</p> <p>18 Q I just want to briefly direct your 19 attention again to the \$181,000.00.</p> <p>20 The discussion that you had with 21 one of the Seavey's about it first, did you 22 feel yourself bound by this obligation of 23 Marks, Paneth & Shron?</p> <p>24 A Well, this is --</p> <p>25 MR. KELLY: Objection to LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 168</p> <p>2 A You would have a separate 3 agreement for Logan Plaza.</p> <p>4 Q You did not see it as your duty to 5 report what you knew about the \$181,000.00 to 6 DHCR or any other regulatory agency, is that 7 correct?</p> <p>8 MR. TRAUB: Objection to the 9 form.</p> <p>10 MR. KELLY: Objection to 11 form.</p> <p>12 A No.</p> <p>13 Q So far as you know, Mr. Jennings 14 did not report that incident or his knowledge 15 of it to DHCR or any of the other regulatory 16 agencies?</p> <p>17 MR. TRAUB: Objection to 18 form.</p> <p>19 MR. KELLY: Join.</p> <p>20 A I don't know what he reported to 21 them.</p> <p>22 Q You never requested that he do so?</p> <p>23 MR. TRAUB: Objection to the 24 form.</p> <p>25 MR. KELLY: Objection to the LEX REPORTING SERVICE 800-608-6085</p>

1	Dawley	169	1	Dawley	171
2	form.		2	form.	
3	A No.		3	Which building?	
4	MR. HAYWOOD: Let me refer you now and look at a document which was Exhibit 12 at the deposition of February 3rd and ask that it be marked as Plaintiff's Exhibit 8.		4	A Which building?	
5	(Two sets of requests was marked as Plaintiff's Exhibit 8, for identification, as of this date.)		5	Q Let's see, was this Charles Hill or Church Home?	
6			6	7 You don't recall it?	
7			8	A No.	
8			9	Q Is there a security company, functioning at one of the four investments, that's functioning without a contract?	
9			10	11	
10			12	A Yes.	
11			13	Q Which development is that?	
12			14	A Lakeview doesn't have a contract.	
13			15	I believe it has expired.	
14			16	Q Do any of the other building not have a contract?	
15	Q I am going to direct your attention, sir, to some of these questions that were raised previously on discovery.		17		
16			18	A I'm not sure.	
17			19	Q The security company at Lakeview, is there a licensed watch guard agency company?	
18	Isn't it a fact that almost all the negotiations between Cameron, Pryce & Griffiths with Dalton were conducted with you and not with Mondesir or Alonzo or the other people, isn't that the fact?		20	21	
19			22	A As far as I know.	
20			23	Q What is the name of it, sir?	
21			24	A Howard Security.	
22			25	Q Howard?	
23	MR. KELLY: Objection to form.			LEX REPORTING SERVICE 800-608-6085	
24					
25	MR. TRAUB: Objection to LEX REPORTING SERVICE 800-608-6085				
	Dawley	170		Dawley	172
1	form.		2	A Howard.	
2			3	Q Who is the director of it, if you know?	
3	Can you clarify negotiations?		4		
4			5	A I don't know.	
5	Q All their requests were with you and not the others?		6	Q Did they obtain this situation by bid?	
6			7		
7	MR. TRAUB: During the six month audit and then their requests?		8	A Originally they did.	
8			9	It was bid under DHCR rules. It was advertised. It was approved and they had a five year contract.	
9			10		
10	Q Between March and up until today, isn't it true that all of that was with you?		11	12	
11			13	Q The five years has expired?	
12	A Most of them, most of them.		14		
13	Q So is it fair to say that almost all the inquiries that they made came to you?		15	Q Is there some reason that the contract is not renewed?	
14			16	A The building was in negotiations to buy out the program. They had a tentative offer to sell it and the new owner didn't want to have us signing a new five year contract so we didn't.	
15	MR. TRAUB: Objection to the form.		17		
16			18		
17	A I would think so.		19		
18	Q Do you recall an inquiry concerning a security payroll contract of \$100,368.00 paid in 2006 under account number 6530. Do you recall this inquiry in the support for the security payroll contract of \$100,000.00; do you recall that request at all?		20	21	
19			22	Q You had mentioned Seavey buildings operating with security companies that don't have contracts?	
20			23		
21	MR. TRAUB: Objection to LEX REPORTING SERVICE 800-608-6085		24	A I am not sure.	
22			25	Q Is that information you can check LEX REPORTING SERVICE 800-608-6085	

<p>1 Dawley 173</p> <p>2 and then supply to us when the transcript is 3 returned to you?</p> <p>4 MR. TRAUB: If you can put a 5 request in writing to a letter we 6 will take it under advisement at 7 this time.</p> <p>8 MR. HAYWOOD: I put it here 9 on the record and ask that a 10 space be left for the production 11 of such information if you're of 12 mind to produce it at that time.</p> <p>13 MR. TRAUB: I am not going 14 to have the burden of reading 15 through the record to figure out 16 what it is that you want, so 17 again if at the end of this you 18 want certain documents you can 19 put it in a letter to us and we 20 will take it under advisement 21 that way.</p> <p>22 MR. HAYWOOD: Well, I would 23 ask that in reading the 24 transcript that you provide it, 25 but whatever.</p> <p>LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 175</p> <p>2 that question?</p> <p>3 MR. HAYWOOD: I don't want 4 to know anything that counsel 5 said to you or you said to 6 counsel. I just want to know if 7 anyone discussed with you the 8 fact that these discovery 9 requests were made?</p> <p>10 MR. TRAUB: You're saying 11 other than counsel?</p> <p>12 Q Just a minute, if anyone discussed 13 with you, anyone, that discovery requests were 14 made both before Judge Baer and Magistrate 15 Francis concerning this information? Did 16 anyone discuss that with you before you came 17 here today?</p> <p>18 MR. TRAUB: Again I am 19 objecting to the form. That's 20 not proper and again to the 21 extent that your response would 22 be response with counsel then 23 you're not to answer that 24 question even whether or not we 25 had the conversation.</p> <p>LEX REPORTING SERVICE 800-608-6085</p>
<p>1 Dawley 174</p> <p>2 MR. TRAUB: I made my 3 request on the record.</p> <p>4 (INSERT):</p> <p>5 Q Did it come to your attention a 6 request concerning a workers compensation 7 policy, which had a bill for \$12,476.03 which 8 recited a payment of \$12,476.03 whereas the 9 actual bill for the policy was \$9,084.60.</p> <p>10 Do you recall Cameron, Pryce & 11 Griffiths raising this question with you?</p> <p>12 A No, I don't.</p> <p>13 Q Did you at any time discuss with 14 counsel or anyone else, the discovery requests 15 that were made in this action before Judge 16 Baer?</p> <p>17 MR. TRAUB: Objection to the 18 form as it asks for 19 attorney/client privilege 20 information, so I am going to 21 instruct the witness to the 22 extent that your answer calls for 23 conversations you had with legal 24 counsel or made at the request of 25 legal counsel you don't answer</p> <p>LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 176</p> <p>2 Q Did anyone discuss with you our 3 discovery demands and the fact that we were 4 looking for support for the claim that 5 \$12,476.00 was paid in 2006 when the policy 6 recited \$9,000? No one discussed that with 7 you, no one approached you to get an answer 8 that question?</p> <p>9 MR. TRAUB: Objection to the 10 form.</p> <p>11 A I don't remember.</p> <p>12 Q But if they had asked you that's 13 information that you could get, is it not?</p> <p>14 A Yes.</p> <p>15 Q Now, let's see with respect to 16 building and liability insurance premiums, did 17 it come to your attention that there was an 18 inquiry concerning whether any excess 19 insurance premium payments were returned and 20 that they wanted to know the names of the 21 brokers involved and to get checks and face 22 sheets of policies which allege prepayments 23 were made; did that inquiry come to your 24 attention at any time?</p> <p>25 A I don't recall, but if they had</p> <p>LEX REPORTING SERVICE 800-608-6085</p>

<p>1 Dawley 177</p> <p>2 asked for any of that information --</p> <p>3 Q You could have supplied it?</p> <p>4 A It would have been easily provided at the site. I mean at our office.</p> <p>5 Q Further, it's the allegation that</p> <p>6 the general ledger entries are not consistent</p> <p>7 with the document produced in response to that</p> <p>8 particular request.</p> <p>9 Did that come to your attention at</p> <p>10 any time?</p> <p>11 MR. TRAUB: Objection to the</p> <p>12 form.</p> <p>13 MR. KELLY: Join.</p> <p>14 A I don't think the question makes sense as asked, no.</p> <p>15 Q You never heard that?</p> <p>16 A Well, I don't know what you're referring to. I mean it doesn't make sense.</p> <p>17 Q The statement that the general</p> <p>18 ledger entries were not consistent with</p> <p>19 documents produced, concerning the building</p> <p>20 and liability insurance company policies, that</p> <p>21 was never brought to your attention?</p> <p>22 A That doesn't make sense, because</p> <p>23 LEX REPORTING SERVICE</p> <p>24 800-608-6085</p>	<p>1 Dawley 179</p> <p>2 MR. TRAUB: Objection to</p> <p>3 form.</p> <p>4 Q Had it ever come to your attention</p> <p>5 that one of the representations made before</p> <p>6 Judge Baer was, "Well, that's information you</p> <p>7 will get on a deposition? Did that come to</p> <p>8 your attention that had been said?</p> <p>9 MR. KELLY: Objection to</p> <p>10 form.</p> <p>11 MR. TRAUB: Again objection</p> <p>12 to form.</p> <p>13 A No.</p> <p>14 Q Yet no one ever talked to you</p> <p>15 about any of these requests?</p> <p>16 A No.</p> <p>17 MR. KELLY: Objection to</p> <p>18 form.</p> <p>19 MR. TRAUB: Objection to</p> <p>20 form.</p> <p>21 A Not that I remember, no.</p> <p>22 MR. TRAUB: Mel, you were</p> <p>23 pointing up and down at the</p> <p>24 request. I just want to state</p> <p>25 Exhibit 8, which previously was</p> <p>LEX REPORTING SERVICE</p> <p>800-608-6085</p>
<p>1 Dawley 178</p> <p>2 the entries that we have for any payments we had invoices for so I don't know what -- it doesn't make sense.</p> <p>3 Q There was a claim that a utility</p> <p>4 deposit was paid for \$4,205.00. Now, all of</p> <p>5 this coming from the same document and</p> <p>6 cancelled checks were requested and not</p> <p>7 produced.</p> <p>8 Did that inquiry ever come to your</p> <p>9 attention?</p> <p>10 MR. TRAUB: Objection to</p> <p>11 form.</p> <p>12 MR. KELLY: Objection to</p> <p>13 form.</p> <p>14 A Well, first if there was payment made for any item there is the cancelled check for it or it wasn't paid.</p> <p>15 Q But no one ever said to you that</p> <p>16 either Cameron, Pryce & Griffiths or Mel</p> <p>17 Haywoode were looking for this document and</p> <p>18 had taken the trouble to go to Judge Baer and</p> <p>19 print it out and to say so and to submit it</p> <p>20 again to Judge Francis and to say so, no one</p> <p>21 ever say that to you?</p> <p>22 LEX REPORTING SERVICE</p> <p>23 800-608-6085</p>	<p>1 Dawley 180</p> <p>2 Exhibit 12 at the last</p> <p>3 deposition, contains two sets of</p> <p>4 requests. The first set that was</p> <p>5 actually produced and then</p> <p>6 Exhibit 12 contains items in</p> <p>7 brackets that expound on the</p> <p>8 first request. I just want to</p> <p>9 clarify whether or not you're</p> <p>10 talking about the actual request</p> <p>11 number or the requests that are</p> <p>12 in brackets?</p> <p>13 MR. HAYWOOD: I am talking</p> <p>14 about the requests that are in</p> <p>15 brackets, because the documents</p> <p>16 in the notice to produce in</p> <p>17 interrogatories, a failure to</p> <p>18 respond was served on all parties</p> <p>19 and was produced to Judge Baer</p> <p>20 and was produced to Magistrate</p> <p>21 Francis in consideration. I'm</p> <p>22 talking about the document in the</p> <p>23 form that it presently exists in.</p> <p>24 MR. TRAUB: I just want to</p> <p>25 state on the record, that</p> <p>LEX REPORTING SERVICE</p> <p>800-608-6085</p>

<p>1 Dawley 181</p> <p>2 Magistrate Francis's order does 3 not rule one way or the other if 4 you made a request on that and 5 Judge Baer, his instructions were 6 to the extent that you believe 7 there was something that was not 8 fully responded to, to put it in 9 a letter to Judge Baer, which is 10 what that form was for him to 11 take under advisement and we have 12 not received a ruling on the 13 court on that either. Those do 14 not constitute, at least in my 15 opinion, discovery requests on 16 the defendants in this matter, 17 the stuff that are in the 18 brackets.</p> <p>19 MR. HAYWOODE: But now for 20 the record, Darren, you said to 21 me that this is information which 22 can be produced on deposition. 23 So that I presumed that there is 24 another witness coming from 25 Dalton -- just a minute, who will</p> <p>LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 183</p> <p>2 documents at least from my 3 clients or that your questions 4 appeared to, for instance, this 5 is unclear. Your questions about 6 something being unclear or 7 nothing is produced in 8 explanation. The explanation 9 could be garnered through an 10 appropriate deposition request 11 and as to your request as to 12 whether or not any additional 13 clients of mine will appear for 14 deposition I believe you did 15 notice Phyllis, Bob, Avery, Neale 16 and I have made them available 17 for deposition.</p> <p>18 MR. HAYWOODE: My point is 19 that I assume that at some point, 20 some of these witnesses are going 21 to be shown these inquiries and 22 told to either respond to them or 23 not. My concern is that we have 24 matters going before Judge 25 Francis talking about deposition</p> <p>LEX REPORTING SERVICE 800-608-6085</p>
<p>1 Dawley 182</p> <p>2 respond to the questions that we 3 had at some point.</p> <p>4 MR. TRAUB: Can I see 5 Exhibit Number 8 real quick?</p> <p>6 MR. HAYWOODE: (Handing.)</p> <p>7 MR. TRAUB: For instance, my 8 comments some of this stuff could 9 be obtained in deposition. For 10 instance, in response to Number 5 11 you have in brackets, were there 12 any excess returns? What are the 13 names of the brokers involved? 14 The general ledger entries are 15 not consistent with documents 16 produced in response to this 17 request.</p> <p>18 The point of my comments, 19 you can get this stuff on 20 deposition, was what are the 21 names of the broker involved, do 22 you remember? Why are the 23 general ledgers not consistent? 24 So my point was that you had 25 either received all of the</p> <p>LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 184</p> <p>2 at a time when there doesn't 3 appear to be any indication that 4 any effort was expended by anyone 5 to respond to the questions that 6 we put before both judges.</p> <p>7 MR. TRAUB: That is my 8 problem. We went over this at 9 the last deposition. Your stuff 10 in brackets is not a discovery 11 request propounded under the 12 federal rules. Your stuff in 13 brackets is in response to Judge 14 Baer's request to you to give to 15 the court what you believe you 16 did not obtain in response to the 17 discovery.</p> <p>18 MR. HAYWOODE: All right, I 19 am just hearing what you're 20 saying that somewhere, somehow 21 the Court of Darren Traub, which 22 is a formidable court, determined 23 the application and determined 24 that no response should be made 25 to those questions. I am being a</p> <p>LEX REPORTING SERVICE 800-608-6085</p>

1	Dawley	185	1	Dawley	187
2	little factitious.		2	did anyone discuss with you that regarding	
3	MR. TRAUB: What I received		3	Lakeview that there is a note payable to Robin	
4	in the mail from you was a		4	Seavey in the amount of \$29,915.16 and that	
5	discovery request similar to		5	Cameron, Pryce & Griffiths had stated that no	
6	Exhibit 8, except that it did not		6	document or support is given for this loan	
7	have the items in brackets and		7	transaction or why it was necessary given the	
8	then in response to your		8	positive cash flow of that development?	
9	statement to Judge Baer that you		9	Did that question ever come to	
10	did not receive any documents Mr.		10	your attention?	
11	Kelly and I stood up and told		11	MR. KELLY: Objection to	
12	Judge Baer that that is not true.		12	form.	
13	We have produced between both of		13	A That particular amount I have	
14	our clients a total of sixteen		14	found out had something to do with a closing	
15	boxes. That was all the		15	or refinancing and that it was monies that	
16	discovery that we had. Then		16	were left after they got through taking care	
17	Judge Baer asked you if you		17	of all the different classifications. That's	
18	contend that you did not get		18	the best I can explain it, because I don't	
19	something in response to		19	have any documentation for that amount. It's	
20	discovery to please put it in a		20	been on books for a long time. I have never	
21	letter.		21	adjusted or changed it.	
22	MR. HAYWOODE: He said make		22	Q Is the note being re-paid to your	
23	a motion.		23	knowledge?	
24	MR. TRAUB: His response at		24	A No, it has not been paid. No	
25	that time in the courtroom was		25	money has been paid, no interest has been	
	LEX REPORTING SERVICE			LEX REPORTING SERVICE	
	800-608-6085			800-608-6085	
	Dawley	186		Dawley	188
2	put it in a letter to him and he		2	accrued. No interest, as far as I know, is	
3	will take it under advisement and		3	even on the note and nothing has happened to	
4	that is what we have.		4	it. It's just sitting there.	
5	MR. HAYWOODE: This document		5	Q Would I be correct in presuming	
6	was served on you prior to you		6	that Robert W. Seavey, would have had to have	
7	going to Judge Baer and it was		7	loaned money to Lakeview in order for such a	
8	served on you a second time at		8	note to generate?	
9	the time it was submitted to		9	MR. TRAUB: Objection to the	
10	Magistrate Francis, so that these		10	form.	
11	were served on both counsel in		11	MR. KELLY: Join.	
12	this form indicating these were		12	A There is an indication on the	
13	the additional questions that we		13	books to Rob Seavey in the amount of \$29,000	
14	had.		14	something. To have a payment for that this	
15	MR. TRAUB: But in response		15	has to be some type of obligation. Whether	
16	to Judge Baer's request for you		16	that obligation was money he loaned, services	
17	to show him what you contend you		17	he did or a myriad of other things, which I	
18	didn't receive that's not		18	can't even begin to think of, is how it got	
19	additional discovery requests.		19	there. It doesn't necessarily have to be	
20	At least we are not taking it as		20	because somebody loaned you the money. It	
21	such. If you want to put them in		21	could have been for services rendered.	
22	additional discovery form we will		22	Q Would the corporation, to your	
23	be more than happy to respond to		23	knowledge, have written a note to Robert	
24	them:		24	Seavey because of service that he rendered?	
25	Q With regard to these questions,		25	MR. TRAUB: Objection to	
	LEX REPORTING SERVICE			LEX REPORTING SERVICE	
	800-608-6085			800-608-6085	

<p>1 Dawley 189</p> <p>2 form.</p> <p>3 MR. KELLY: Objection.</p> <p>4 A I don't know.</p> <p>5 I am saying it could have come up</p> <p>6 for a myriad of different reasons.</p> <p>7 MR. TRAUB: I don't want you</p> <p>8 to guess.</p> <p>9 A I don't know.</p> <p>10 MR. TRAUB: I am entitled to</p> <p>11 tell the witness not to guess.</p> <p>12 You know that I am.</p> <p>13 MR. HAYWOOD: You can say</p> <p>14 anything to any witness, tell him</p> <p>15 anything. You can tell him don't</p> <p>16 slide when you're coming into</p> <p>17 third base too, I don't know, but</p> <p>18 not during the deposition as I</p> <p>19 understand it.</p> <p>20 MR. TRAUB: I can instruct</p> <p>21 my witness not to guess and I</p> <p>22 stand on my objection on the</p> <p>23 record and if you object -- you</p> <p>24 can keep laughing at me just like</p> <p>25 you've been laughing at me all</p> <p>LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 191</p> <p>2 A I am assuming that they were, yes.</p> <p>3 Q I am going to show you again</p> <p>4 Plaintiff's Exhibit 4 from the examination of</p> <p>5 February 3rd.</p> <p>6 (A copy of the general</p> <p>7 ledger expense sheet was</p> <p>8 marked as Plaintiff's</p> <p>9 Exhibit 9, for</p> <p>10 identification, as of this</p> <p>11 date.)</p> <p>12 Q I direct your attention to Exhibit</p> <p>13 9.</p> <p>14 Is that a copy of the general</p> <p>15 ledger expense sheet done by Dalton</p> <p>16 Management?</p> <p>17 A Yes, it is.</p> <p>18 Q Looking at that sheet, sir, does</p> <p>19 it show the amounts of money paid to Marks,</p> <p>20 Paneth & Shron in 2006?</p> <p>21 A Yes, it does.</p> <p>22 Q How much is that?</p> <p>23 A Total is \$108,525.45.</p> <p>24 Q That's the ledger that you</p> <p>25 generated and submitted to Marks, Paneth & LEX REPORTING SERVICE 800-608-6085</p>
<p>1 Dawley 190</p> <p>2 day.</p> <p>3 MR. HAYWOOD: Since I met</p> <p>4 you I have always said I am</p> <p>5 impressed by you. I like you</p> <p>6 guys. You're a fine lawyer. If</p> <p>7 I'm laughing or something like</p> <p>8 that, believe me, it's not in any</p> <p>9 kind of derision of you, because</p> <p>10 I am most impressed by the</p> <p>11 quality and the demeanor of all</p> <p>12 counsel in this action so far.</p> <p>13 So I am not being derisive. I am</p> <p>14 not being critical and I know of</p> <p>15 no reason why I should be</p> <p>16 critical of either of you guys.</p> <p>17 Let's get that straight.</p> <p>18 Q The next question the 2006</p> <p>19 financial statement you had stated \$34,000.00</p> <p>20 was paid to the auditors, Mark Paneth and</p> <p>21 Shron that fiscal year when in actuality it</p> <p>22 was \$180,000. We mentioned this and the</p> <p>23 question was why. I recall that you indicated</p> <p>24 that there were other services performed</p> <p>25 previously, is that correct?</p> <p>LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 192</p> <p>2 Shron for their audit, is that correct?</p> <p>3 A That would have been, yes.</p> <p>4 Q Were there adjustment journal</p> <p>5 entries made in the final statement, in the</p> <p>6 financial statement with regard to that money?</p> <p>7 MR. TRAUB: Objection to</p> <p>8 form.</p> <p>9 A Without seeing the rest of the</p> <p>10 financial information I can't tell you.</p> <p>11 MR. HAYWOOD: I ask you to</p> <p>12 mark this as Plaintiff's Exhibit</p> <p>13 10.</p> <p>14 (One page of journal entries</p> <p>15 for the fiscal year ending</p> <p>16 12/31/2006 was marked as</p> <p>17 Plaintiff's Exhibit 10, for</p> <p>18 identification, as of this</p> <p>19 date.)</p> <p>20 Q Would you take a look at</p> <p>21 Plaintiff's 10 and tell us what that document</p> <p>22 is.</p> <p>23 A This one page of journal entries</p> <p>24 for the fiscal year ending -- calendar year</p> <p>25 ending 12/31/2006.</p> <p>LEX REPORTING SERVICE 800-608-6085</p>

<p>1 Dawley 193</p> <p>2 Q Who is the document generated by?</p> <p>3 A Which one?</p> <p>4 Q Ten.</p> <p>A That's the adjusting journal entries. They were done by Marks, Paneth & Shron.</p> <p>8 Q I want you to compare the general ledger recommendations from Dalton, which listed the accounting fees paid to Marks, Paneth & Shron as \$108,000.00 and compare the figure that's contained in the financial statement generated by Marks, Paneth & Shron as to what they received?</p> <p>15 MR. KELLY: Objection to form.</p> <p>17 A This isn't all the journal entries. I don't know if there were anymore journal entries that were made in addition to this one, but there is one journal entry that reclassified fees \$82,909.00 from account 6220 to account 6204.</p> <p>23 Q What is account 6204?</p> <p>24 A Management consulting.</p> <p>25 Q It's fair to say that what you</p> <p>LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 195</p> <p>2 you told me to recite and I don't know what else you want to know.</p> <p>4 Q In the financial statement, is there any comments in there which mention the \$34,000.00?</p> <p>7 MR. KELLY: Objection to form.</p> <p>9 A Well, you said financial statement?</p> <p>11 Q Yes, is there any?</p> <p>12 A These aren't financial statements.</p> <p>13 MR. TRAUB: This item being Exhibit 10.</p> <p>15 A There is nothing here that shows what the audit fee is.</p> <p>17 Q Would that be shown someplace else?</p> <p>19 A Well, this is the total cash disbursements that were made.</p> <p>21 Q That's in the general ledger?</p> <p>22 MR. TRAUB: For the record, you're pointing at Exhibit 9 now?</p> <p>24 MR. HAYWOOD: Indicating Exhibit 9.</p> <p>LEX REPORTING SERVICE 800-608-6085</p>
<p>1 Dawley 194</p> <p>2 just told me is that a journal entry adjustment was made, which put at least \$82,000.00 of this money into another category, is that correct?</p> <p>6 MR. TRAUB: Objection to form.</p> <p>8 MR. KELLY: Objection to form.</p> <p>10 A It reclassified \$82,909.00 from accounting to management consultant.</p> <p>12 Q On Exhibit 10 does it list what was paid to Marks, Paneth & Shron as auditing fees?</p> <p>15 A No.</p> <p>16 Q So that no where on Exhibit 10 does it show that Marks, Paneth & Shron received auditing fees?</p> <p>19 A Exhibit 10 is a journal entry. It says here journal entry number 8.</p> <p>21 Q I am sorry, when you say it is journal entry number 8 what are you indicating, sir?</p> <p>24 A This is journal entry number 8.</p> <p>25 This is part of journal entry number 8 that</p> <p>LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 196</p> <p>2 Q Is it fair to say that Dalton said that Marks, Paneth & Shron got \$108,000.00 in 2006 and that Marks, Paneth & Shron did a journal adjustment to say something else?</p> <p>6 MR. KELLY: Objection to form.</p> <p>8 MR. TRAUB: Objection to form.</p> <p>10 Q Would that be fair to say.</p> <p>11 A What the entry does is it reclassified.</p> <p>13 Q \$82,000.00?</p> <p>14 A Right.</p> <p>15 Q What does it do with the remaining \$34,000.00, if anything?</p> <p>17 A If you read the captions on the general ledger under the caption accounting you will see that expenditures were for tax analysis, tax preparation, IRS tax examination and then I have to various, which I'd have to look at invoice to see what they were for.</p> <p>23 Q How much money is covered by the various?</p> <p>25 A About \$24,000.00.</p> <p>LEX REPORTING SERVICE 800-608-6085</p>

<p>1 Dawley 197</p> <p>2 Q There was a closing that took 3 place in 2004 and a sum of \$322,000.00 was 4 transferred from Church Homes, as I recall, to 5 account number 2.</p> <p>6 A Wait, wait, wait I am confused.</p> <p>7 Q Do you have any recollection of 8 that?</p> <p>9 A Wait, wait, this is this is Fifth 10 and 106th.</p> <p>11 Q Okay.</p> <p>12 A You're done with this?</p> <p>13 Q Yes.</p> <p>14 This \$82,000.00 what is the 15 historiography or the anthropology if you will 16 of that money, where did it come from?</p> <p>17 A Wait, wait.</p> <p>18 Q This \$82,000.00 consultant fees 19 and what else; various and what else?</p> <p>20 MR. TRAUB: Objection to the 21 form.</p> <p>22 MR. KELLY: Join.</p> <p>23 A It says IRS tax examination, tax 24 preparation and tax analysis.</p> <p>25 Q Does it say when those services LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 199</p> <p>2 statement, but I can't tell what year.</p> <p>3 Q Who is it generated by?</p> <p>4 A This is generated by the Marks, 5 Paneth & Shron.</p> <p>6 Q Is it fair to say that document 7 suggests that the total value or amount of 8 money that was paid to Marks, Paneth & Shron 9 in 2006?</p> <p>10 MR. TRAUB: Objection to 11 form.</p> <p>12 Q It says Marks, Paneth & Shron, 13 LLP. It says retainer and then under the 14 classification of accounting it says 15 \$34,155.00.</p> <p>16 Was that document produced for 17 DHCR?</p> <p>18 A Yes.</p> <p>19 Q Does HUD get involved in any way 20 in that document?</p> <p>21 A I don't think HUD gets a copy.</p> <p>22 They might get one. We send them to about 23 four or five different agencies.</p> <p>24 Q How do you send it?</p> <p>25 A By mail. LEX REPORTING SERVICE 800-608-6085</p>
<p>1 Dawley 198</p> <p>2 were provided?</p> <p>3 A The tax analysis was for years 4 2001 to 2004. Tax preparation was 2003 and 5 the IRS tax examination doesn't have a year. 6 We'd have to look at the specific invoices.</p> <p>7 Q There is no chance that the tax 8 analysis referred to in that money, could have 9 been performed by Grenadier Management or 10 Marion Scott or anybody else, is there?</p> <p>11 A Probably not.</p> <p>12 Not the New York Yankees or the 13 Boston Red Sox or Edmonds.</p> <p>14 Q Touché?</p> <p>15 MR. HAYWOOD: Please mark 16 this as Plaintiff's Exhibit 11.</p> <p>17 (An annual financial 18 statement was marked as 19 Plaintiff's Exhibit 11, for 20 identification, as of this 21 date.)</p> <p>22 Q I am going to ask you, sir, if you 23 recognize what that document is?</p> <p>24 A Let's see it's Page 26 to 27. It 25 appears to be either the annual financial LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 200</p> <p>2 Q You do that in all instances, is 3 that correct?</p> <p>4 A Yes.</p> <p>5 Q Is there a reason why that form 6 doesn't include the other \$82,000.00 7 consultant fees?</p> <p>8 MR. KELLY: Objection to 9 form.</p> <p>10 A The reason why it doesn't?</p> <p>11 Q Yes.</p> <p>12 A I have no -- no, I don't know. I 13 have no idea.</p> <p>14 Q Who made the determination to 15 reduce the amount of monies reported in 16 Dalton's general ledger as \$108,000.00 to 17 \$34,000.00 in the financial statement, who 18 made that determination?</p> <p>19 MR. TRAUB: Objection to the 20 form.</p> <p>21 MR. KELLY: Objection to 22 form.</p> <p>23 A The journal entry that you pointed 24 out in Exhibit 10, which we classified 25 \$82,000.00, was produced by Marks, Paneth & LEX REPORTING SERVICE 800-608-6085</p>